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**BEFORE THE  
PHYSICAL THERAPY BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

J. GRAY O'BRIEN  
917 Venezia  
Venice, CA 90291

Physical Therapy License No. PT 25009

Respondent.

Case No. 1D 2004 63747

**A C C U S A T I O N**

Complainant alleges:

**PARTIES**

1. Steven K. Hartzell (Complainant) brings this Accusation solely in his official capacity as the Executive Officer of the Physical Therapy Board of California, Department of Consumer Affairs.

2. On or about February 22, 2000, the Physical Therapy Board of California issued Physical Therapy License Number PT 25009 to J. Gray O'Brien (Respondent). The Physical Therapy License was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2005, unless renewed.

**JURISDICTION**

3. This Accusation is brought before the Physical Therapy Board of California (Board), Department of Consumer Affairs, under the authority of the following laws.

1 All section references are to the Business and Professions Code unless otherwise indicated.

2 4. Section 2660 of the Code states:

3 “The board may, after the conduct of appropriate proceedings under the  
4 Administrative Procedure Act, suspend for not more than 12 months, or revoke, or  
5 impose probationary conditions upon any license, certificate, or approval issued under  
6 this chapter for unprofessional conduct that includes, but is not limited to, one or any  
7 combination of the following causes:

8 \*\*\*\*\*

9 “(h) Gross negligence in his or her practice as a physical therapist or  
10 physical therapy assistant.

11 “(i) Conviction of a violation of any of the provisions of this chapter or of  
12 the State Medical Practice Act, or violating, or attempting to violate, directly or  
13 indirectly, or assisting in or abetting the violating of, or conspiring to violate any  
14 provision or term of this chapter or of the State Medical Practice Act.

15 “(j) The aiding or abetting of any person to violate this chapter or any  
16 regulations duly adopted under this chapter.

17 (k) The aiding or abetting of any person to engage in the unlawful practice  
18 of physical therapy.

19 (l) The commission of any fraudulent, dishonest, or corrupt act which is  
20 substantially related to the qualifications, functions, or duties of a physical  
21 therapist or physical therapy assistant.”

22 5. Section 2630 of the Code states, in pertinent part:

23 “A physical therapist . . . may utilize the services of one aide engaged in patient-  
24 related tasks to assist the physical therapist in his or her practice of physical therapy. . . .  
25 The aide shall at all times be under the orders, directions, and immediate supervision of  
26 the physical therapist. . . . The physical therapist shall provide continuous and immediate  
27 supervision of the aide. The physical therapist shall be in the same facility as, and in  
28 proximity to, the location where the aide is performing patient-related tasks, and shall be

1 readily available at all times to provide advice or instruction to the aide. When patient-  
2 related tasks are provided to a patient by an aide, the supervising physical therapist shall,  
3 at some point during the treatment day, provide direct service to the patient as treatment  
4 for the patient's condition, or to further evaluate and monitor the patient's progress, and  
5 shall correspondingly document the patient's record."

6 6. Section 2620.7 of the Code states:

7 "A physical therapist shall document his or her evaluation, goals, treatment plan,  
8 and summary of treatment in the patient record. Patient records shall be maintained for a  
9 period of no less than seven years following the discharge of the patient, except that the  
10 records of unemancipated minors shall be maintained at least one year after the minor has  
11 reached the age of 18 years, and not in any case less than seven years."

12 7. California Code of Regulations, title 16, section 1399, states:

13 "A physical therapy aide is an unlicensed person who assists a physical therapist  
14 and may be utilized by a physical therapist in his or her practice by performing nonpatient  
15 related tasks, or by performing patient related tasks.

16 "(a) As used in these regulations:

17 "(1) A "patient related task" means a physical therapy service rendered directly to  
18 the patient by an aide, excluding nonpatient related tasks as defined below.

19 "(2) A "nonpatient related task" means a task related to observation of the patient,  
20 transport of patients, physical support only during gait or transfer training, housekeeping  
21 duties, clerical duties and similar functions.

22 "(b) "Under the orders, direction and immediate supervision" means:

23 "(1) Prior to the initiation of care, the physical therapist shall evaluate every  
24 patient prior to the performance of any patient related tasks by the aide. The evaluation  
25 shall be documented in the patient's record.

26 "(2) The physical therapist shall formulate and record in the patient's record a  
27 treatment program based upon the evaluation and any other information available to the  
28 physical therapist, and shall determine those patient related tasks which may be assigned

1 to an aide. The patient's record shall reflect those patient related tasks that were rendered  
2 by the aide, including the signature of the aide who performed those tasks.

3 “(3) The physical therapist shall assign only those patient related tasks that can be  
4 safely and effectively performed by the aide. The supervising physical therapist shall be  
5 responsible at all times for the conduct of the aide while he or she is on duty.

6 “(4) The physical therapist shall provide continuous and immediate supervision of  
7 the aide. The physical therapist shall be in the same facility as and in immediate  
8 proximity to the location where the aide is performing patient related tasks, and shall be  
9 readily available at all times to provide advice or instruction to the aide. When patient  
10 related tasks are provided a patient by an aide the supervising physical therapist shall at  
11 some point during the treatment day provide direct service to the patient as treatment for  
12 the patient's condition or to further evaluate and monitor the patient's progress, and so  
13 document in the patient's record.

14 “(5) The physical therapist shall perform periodic re-evaluation of the patient as  
15 necessary and make adjustments in the patient's treatment program. The re-evaluation  
16 shall be documented in the patient's record.

17 “(6) The supervising physical therapist shall countersign with their first initial and  
18 last name, and date all entries in the patient's record, on the same day as patient related  
19 tasks were provided by the aide.”

20 8. Section 725 of the Code states:

21 “Repeated acts of clearly excessive prescribing or administering of drugs or  
22 treatment, repeated acts of clearly excessive use of diagnostic procedures, or repeated acts  
23 of clearly excessive use of diagnostic or treatment facilities as determined by the standard  
24 of the community of licensees is unprofessional conduct for a physician and surgeon,  
25 dentist, podiatrist, psychologist, physical therapist, chiropractor, or optometrist.  
26 However, pursuant to Section 2241.5, no physician and surgeon in compliance with the  
27 California Intractable Pain Treatment Act shall be subject to disciplinary action for  
28 lawfully prescribing or administering controlled substances in the course of treatment of a

1 person for intractable pain.”

2 9. Section 2661.5 of the Code states:

3 “(a) In any order issued in resolution of a disciplinary proceeding before  
4 the board, the board may request the administrative law judge to direct any  
5 licensee found guilty of unprofessional conduct to pay to the board a sum not to  
6 exceed the actual and reasonable costs of the investigation and prosecution of the  
7 case.

8 “(b) The costs to be assessed shall be fixed by the administrative law  
9 judge and shall not in any event be increased by the board. When the board does  
10 not adopt a proposed decision and remands the case to an administrative law  
11 judge, the administrative law judge shall not increase the amount of the assessed  
12 costs specified in the proposed decision.

13 “(c) When the payment directed in an order for payment of costs is not  
14 made by the licensee, the board may enforce the order of payment by bringing an  
15 action in any appropriate court. This right of enforcement shall be in addition to  
16 any other rights the board may have as to any licensee directed to pay costs.

17 “(d) In any judicial action for the recovery of costs, proof of the board's  
18 decision shall be conclusive proof of the validity of the order of payment and the  
19 terms for payment.

20 “(e) (1) Except as provided in paragraph (2), the board shall not renew or  
21 reinstate the license or approval of any person who has failed to pay all of the  
22 costs ordered under this section.

23 “(2) Notwithstanding paragraph (1), the board may, in its discretion,  
24 conditionally renew or reinstate for a maximum of one year the license or  
25 approval of any person who demonstrates financial hardship and who enters into a  
26 formal agreement with the board to reimburse the board within that one year  
27 period for those unpaid costs.

28 “(f) All costs recovered under this section shall be deposited in the

Physical Therapy Fund as a reimbursement in either the fiscal year in which the costs are actually recovered or the previous fiscal year, as the board may direct.”

**FIRST CAUSE FOR DISCIPLINE**

(Gross Negligence/Supervision of Physical Therapy Aides)

10. Respondent is subject to disciplinary action under section 2660, subdivisions (h), (i), (j), (k), and (l), and section 2630, in conjunction with California Code of Regulations Title 16, section 1399, in that he failed to properly supervise physical therapy aides, and failed to properly document treatment and sign patient charts. The circumstances are as follows:

A. With respect to K.A.<sup>1</sup>, respondent’s patient was treated by a physical therapy aide on May 7, 14, 17, June 6, 12, 20, July 2, 18, 23, August 7, 20, 27, September 4, 6, 13, 17, 24 and 27, 2002, without any documentation that the services were appropriately delegated to the aide and without any direct supervision by respondent of the physical therapy aide, or any direct service to the patient rendered by respondent.

**SECOND CAUSE FOR DISCIPLINE**

(Gross Negligence)

11. Respondent is subject to disciplinary action under Code section 725, subdivision (h), in that he was grossly negligent when he provided physical therapy services to a patient without an appropriate medical diagnosis in the patient’s chart. The circumstances are as follows:

A. On or about April 10, 2002, respondent performed an initial physical therapy evaluation of patient K.A. and thereafter, until May 10, 2002, provided physical therapy services to patient K.A. in the absence of a medical diagnosis in the patient’s chart.

**THIRD CAUSE FOR DISCIPLINE**

(Overutilization of Physical Therapy Services)

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1. All patients are referred to herein by their initials to protect their privacy. The full names of all patients will be disclosed to respondent upon a timely request for discovery.

12. Respondent is subject to disciplinary action under Code section 725 in that he engaged in repeated acts of clearly excessive administering of treatment or repeated acts of clearly excessive use of treatment facilities as determined by the standard of the community of licensees. The circumstances are as follows:

A. From on or about April 10, 2002, through on or about September 27, 2002, respondent provided, or supervised the provision of, physical therapy services to patient K.A. without documenting any appreciable patient improvement in the patient's chart.

#### **FOURTH CAUSE FOR DISCIPLINE**

(Gross Negligence)

13. Respondent is subject to disciplinary action under Code section 2660, subdivision (h), in that he was grossly negligent when he failed to document and sign a discharge summary in a patient's chart. The circumstances are as follows:

A. On or about September 27, 2002, or thereafter, respondent failed to document and sign a discharge summary in patient K.A.'s chart.

#### **FIFTH CAUSE FOR DISCIPLINE**

(Aiding or Abetting the Unlawful Practice of Physical Therapy)

14. Respondent is subject to disciplinary action under Code section 2660, subdivisions (j) and (k), in that he aided or abetted the unlawful practice of physical therapy. The circumstances are as follows:

A. The facts and circumstances alleged in paragraph 10 above are incorporated here as if fully set forth.

#### **SIXTH CAUSE FOR DISCIPLINE**

(Dishonest Acts)

15. Respondent is subject to disciplinary action under Code section 2660, subdivisions (l) in that he committed a fraudulent, dishonest, or corrupt act which is substantially related to the qualifications, functions, or duties of a physical therapist or physical therapy assistant. The circumstances are as follows:

A. A false record was placed in patient K.A.'s chart when a copy was made of the May 10, 2002, prescription and placed in the chart with the date changed to June 21, 2002.

## P R A Y E R

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Physical Therapy Board of California issue a decision:

1. Revoking or suspending Physical Therapy License Number PT 25009,  
issued to J. Gray O'Brien;

2. Ordering J. Gray O'Brien to pay the Physical Therapy Board of California the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 2661.3;

3. Taking such other and further action as deemed necessary and proper.

DATED: August 4, 2005

Original Signed By:  
STEVEN K. HARTZELL  
Executive Officer  
Physical Therapy Board of California  
Department of Consumer Affairs  
State of California  
Complainant